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*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

Anita J. Scarim,

Plaintiff,

vs.

Charles L. Ryan, et al.,

Defendants.

No. CV 11-01736-PHX-SRB

**PLAINTIFF'S MOTION *IN LIMINE***  
**TO PRECLUDE EVIDENCE OF HER**  
**PRIOR CRIMINAL CONVICTIONS**

1 Plaintiff, through undersigned counsel and pursuant to Federal Rules of  
2 Evidence 609 and 403, respectfully moves this Court, *in Limine*, to preclude from  
3 trial evidence that she has been convicted of three counts of “theft” in the Yavapai  
4 County Superior Court, which convictions resulted in her prison sentence in the  
5 Arizona Department of Corrections.

6 This Motion is fully supported by the attached memorandum of points and  
7 authorities, which is incorporated into this motion by this reference.  
8

9 RESPECTFULLY SUBMITTED this 30th day of September, 2013.

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22 *Attorneys for Plaintiff, Anita Scarim*  
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## MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Anita Scarim was convicted in Yavapai County Superior Court Cause No. CR820080242 for three counts of theft, in violation of Arizona Revised Statutes § 13-1802(A)(2). She was sentenced to serve three years in the Arizona Department of Corrections for these offenses, with sentencing to run concurrently for all three charges. Arizona Revised Statutes § 13-1802(A)(2) proscribes conduct when a person “without lawful authority...knowingly...converts for an unauthorized term or use services or property of another entrusted to the defendant...for a limited, authorized term or use....”

Because “theft” in Arizona is not a crime that can “readily...be determined” is a crime involving dishonesty or a false statement, Federal Rules of Evidence 609(a)(1) and 403 mandate that evidence of a prior conviction for that crime is inadmissible if its “probative value is substantially outweighed” by its prejudicial effect to Mrs. Scarim. Fed. R. Evid. 609(a)(1), 609(a)(2) and 403. The elements of theft in Arizona contain no mention of dishonesty or false statements.

In this case, it is readily apparent that the three prior theft convictions would be extremely prejudicial to Ms. Scarim, and have very little probative value on the central issue in this case, namely, whether Ms. Scarim received Constitutionally-mandated health care while in the Arizona Department of Corrections. Evidence of the three prior theft convictions should be excluded pursuant to Rule 403, because whatever tiny probative value the convictions might have is substantially outweighed by the danger that the jury will disbelieve Mrs. Scarim solely because of them.

Unfair prejudice includes “generalizing a [party’s] earlier bad act into bad character,” and inflaming the emotions of the jury by implying that a person with a

1 prior conviction should never be believed. Old Chief v. United States, 519 U.S.  
2 172, 180-81, 117 S.Ct. 644, 652 (1997). Put simply, jurors are likely to put too  
3 much emphasis on prior criminal history. Such evidence will often “overpersuade  
4 [sic] them as to prejudge [the convicted party] with a bad general record and deny  
5 him a fair opportunity to [present his side of the case].” Id. (quoting Michelson v.  
6 United States, 335 U.S. 469, 475-76 (1948)).

7  
8 Additionally, Federal Rule of Evidence 404(b) specifically disallows the use  
9 of evidence of other crimes, wrongs or acts to prove the character of a person “in  
10 order to show action in conformity therewith.” Fed. R. Evid. 404(b) (none of that  
11 Rule’s exceptions apply in this case). This Rule was established to prevent the  
12 precise type of unfair prejudice that would occur in Mrs. Scarim’s case if her three  
13 prior theft convictions were permitted as impeachment evidence against her in this  
14 civil law suit for damages due to her deteriorating medical condition in the Arizona  
15 Department of Corrections.

16 A 7<sup>th</sup> Circuit opinion, which has been cited in the 9<sup>th</sup> Circuit, provides  
17 guidance to assist district judges when confronted with a Rule 609 motion to  
18 preclude evidence of a witness’ prior criminal convictions. See United States v.  
19 Cook, 608 F.2d 1175, 1188, n. 8 (9<sup>th</sup> Cir. 1979) (citing United States v. Mahone,  
20 537 F.2d 922, 929 (7<sup>th</sup> Cir. 1976)). The Mahone Court found that the proponent of  
21 introducing the evidence of prior convictions (in Mrs. Scarim’s case, the  
22 Defendants) had the burden of establishing the admissibility of those prior  
23 convictions. Id. The factors to be considered by the district judges are: 1) the  
24 impeachment value of the prior crime(s), 2) the point in time of the conviction and  
25 the witness’ subsequent history, 3) the similarity between the past crime and the  
26  
27  
28

1 crime currently charged, 4) the importance of the [convicted person's] testimony,  
2 and 5) the centrality of the credibility issue. Id.

3 In the case at bench, Mrs. Scarim's prior criminal convictions for theft have  
4 little to no impeachment value to the issues in this case. Importantly, theft crimes,  
5 like shoplifting, are not crimes involving "dishonesty or false statements." United  
6 States v. Ortega, 561 F.2d 803, 806 (9<sup>th</sup> Cir. 1977) (dishonesty is involved in crimes  
7 like perjury, false swearing, false pretense, and the like, but is not involved in taking  
8 the property of another).  
9

10 Regarding factor numbered two above, Mrs. Scarim was convicted in 2008  
11 for these crimes and has committed no new crimes since her release from prison in  
12 2010. Mrs. Scarim is not being charged with a crime currently, so factor numbered  
13 three has no bearing on this case (factor three generally only applies in criminal  
14 cases, unlike this case). Regarding factor numbered four, Mrs. Scarim's testimony  
15 is important, but she is not the only witness testifying on her behalf. Dr. Samanta  
16 will support her testimony regarding her medical condition, treatment for that  
17 condition, and the pain and suffering she has endured. Similarly, fact witnesses,  
18 such as Roger Scarim, Nicole Florisi, Amy Bayless, and Elizabeth Dudney, will  
19 support her testimony regarding her physical condition before, during and after her  
20 release from prison. Those witnesses have clean criminal records and two of them  
21 are sworn Arizona police officers. Finally, concerning factor numbered five, as  
22 mentioned above, Mrs. Scarim's prior criminal convictions for theft have absolutely  
23 nothing to do with the central issue in this case: her medical care in prison.  
24

25 Put simply, whatever tiny probative value the prior theft convictions might  
26 have is enormously outweighed by the danger of unfair prejudice that Mrs. Scarim  
27 would endure were they admitted into evidence. This case is not about her theft  
28

1 charges. She plead guilty to those offenses, and served her prison time as  
 2 punishment for those offenses. This case is about her lack of appropriate medical  
 3 care in prison.

4 In the event that this Court decides that the prior convictions may be used to  
 5 impeach Mrs. Scarim's testimony at trial, Mrs. Scarim requests that the Court use  
 6 its discretion to "sanitize" the prior convictions. The Court can reduce the risk of  
 7 prejudice to a defendant by admitting only the fact of a prior conviction without  
 8 disclosing to the jury the nature of the crime(s). United States v. Martinez-  
 9 Martinez, 369 F.3d 1076, 1088 (9<sup>th</sup> Cir. 2004); United States v. Hursh, 217 F.3d  
 10 761, 768 (9<sup>th</sup> Cir. 2000). The decision whether to have a prior conviction sanitized,  
 11 if the conviction is allowed into evidence at all, should be made by the party with  
 12 the conviction. Id.

13  
 14 RESPECTFULLY SUBMITTED this 30th day of September, 2013.

15  
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28 *Attorneys for Plaintiff, Anita Scarim*

1 **CERTIFICATION OF SERVICE**

2 I hereby certify that on September 30, 2013, I electronically transmitted the  
3 foregoing document to the Clerk of Court using the CM/ECF system for filing and  
4 transmittal of a Notice of Electronic Filing to the following registrants:

5  
6 Jeffrey J. Campbell  
7 Mary G. Isban  
8 CAMPBELL, YOST, CLARE & NORELL, P.C.  
9 101 N. First Ave., Suite 2500  
10 Phoenix, AZ 85003  
11 [misban@cycn-phx.com](mailto:misban@cycn-phx.com)  
12 Attorneys for Defendants

13 I further certify that on this 30th day of September, 2013, I mailed a copy of  
14 this document to the following:

15 HONORABLE SUSAN R. BOLTON  
16 United States District Court  
17 Sandra Day O'Connor U.S. Courthouse, Suite 522  
18 401 West Washington Street, SPC 50  
19 Phoenix, AZ 85003-2153

20 s/ Cheri Baker

21 Cheri Baker  
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